

JUANITA H. MAYER

IBLA 81-219

Decided December 23, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting in part noncompetitive oil and gas lease offer M 45275 (ND) Acq.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

2. Oil and Gas Leases: Known Geologic Structure

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error, and the determination will not be disturbed in the absence of a clear and definite showing of error.

APPEARANCES: Holly L. Carlson, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Juanita H. Mayer appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated November 24, 1980, rejecting noncompetitive oil and gas lease offer M 45275 (ND) Acq. The decision stated in part:

Your drawing Entry Card received priority No. 1 in the redrawing on March 14, 1980, for Parcel MT 95 listed in November 1979.

Your offer is hereby rejected as to the following lands because the U.S. Geological Survey has determined that as of August 26, 1980, they were within an undefined known geologic structure:

T. 146 N., R. 104 W., 5th P.M.
Sec. 26: SW 1/4 NW 1/4, W 1/2 SW 1/4

(McKenzie County, North Dakota)

The remainder of the lease is not within a known geologic structure at this time.

On appeal appellant asserts that the well that was the basis for the determination by the Geological Survey (Survey) that the excluded lands were within an undefined known geologic structure (KGS) was the Shell Oil Company No. 43-27A well located in the E 1/2 NE 1/4 SE 1/4 of sec. 27, T. 146 N., R. 104 W., fifth principal meridian. Appellant further asserts that Survey's well record, dated October 28, 1980, indicated that the well was completed on August 26, 1980, at a depth of approximately 10,700 feet and that its initial production was 35 barrels of oil per day. Appellant contends that she has been advised that the well has been shut in and that there has been no production from the well since December 1980. Appellant also asserts that the well developed by the Shell Oil Company will not be commercially productive because it is uneconomical to attempt completion of the well at a depth in excess of 10,000 feet. Finally, appellant contends that, in light of the poor production of the Shell well, it was premature on the part of Survey to use the Shell well as the basis of a decision that the lands excluded from her lease were within an undefined KGS.

In response to appellant's allegations, the Regional Deputy Conservation Manager of Survey confirms that the well which was the basis for the KGS determination was shut in from January through March 1981. However, Survey advises that the well came back into production in April of 1981 and, following workover of the well, production increased markedly to a total of 3,278 barrels (105.7 barrels of oil per day) for the month of August 1981.

[1] Land within a KGS of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and appellant's noncompetitive lease offer is properly rejected where, before the lease is actually issued, BLM determines that the land is within the KGS of a producing oil or gas field. 30 U.S.C. § 226(b) (1976); Donnie R. Clouse, 51 IBLA 221 (1980); Ervin Wheeler, 51 IBLA 66 (1980); Pauline C. Lebsack, 50 IBLA 361 (1980).

[2] The Secretary of the Interior has delegated the duty to determine the KGS of producing oil and gas fields to the Director of the Geological Survey, 43 CFR 3100.7-1, and when Survey makes this determination, the Secretary is entitled to rely upon the reasoned opinion of his technical expert in the field. Ervin Wheeler, supra at 69; Curtis Wheeler, 31 IBLA 221 (1977).

An applicant for an oil and gas lease who challenges a determination by Survey that lands are situated within a KGS has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error. Ervin Wheeler, supra at 69; United States v. William T. Alexander, 41 IBLA 1 (1979); Curtis Wheeler, supra. Appellant's assertion, when viewed in light of the information provided by Survey, is not sufficient to meet that burden of showing error in the KGS determination made by Survey.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Edward W. Stuebing
Administrative Judge

